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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,492	11/14/2001	Teresa Barbara Crook	CM2045F	8062

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/30/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,492

Applicant(s)

CROOK ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1-8, 10-17.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 29, 2003 has been entered. Claims 1-8 and 10-17 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-3 and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Kimura et al. (US 5690916) ("Kimura") in view of ("Dietz") (US 6132873) ("Dietz") and JP 57098205 A ("Pola abstract") and Bodelin-LeComte (US 5928652).

Kimura teaches skin-color adjusting composition comprising 5.0 % by weight of titanium-coated mica which have transmitted interference color green; 9.0 % by weight of titanium dioxide treated with silicone; and 5.0 % by weight of globular nylon powder. See Example 8; instant claim 3. See also Example 9 and 11. The reference teaches that emulsion-type, water-dispersed, and oil-dispersed foundations are conventional cosmetic formulations in which pigments are used. See col. 1, lines 20 – 29; instant claim 13. The method of applying the composition to the skin to even the skin-tone is an obvious use of the invention. See instant claims 13-17.

While Kimura teaches different weight range of the interference pigments and inorganic powder, differences in the concentration of the actives in general will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. See MPEP § 2144.05. Since the general conditions of the instant claims are disclosed in Kimura, examiner views that one having ordinary skill in the art would have discovered the optimum or workable ranges by routine experimentation. Lowering the amount of the interference pigments also is viewed economically advantageous from the perspective of a manufacturer, or an obvious optimization to match the desired shade or intensity of the color.

Kimura fails to disclose interference pigments having titanium dioxide layer of 120 nm – 160 nm.

Dietz teaches multilayered interference pigments useful for cosmetic applications. Col. 1, line 55 – col. 2, line 18. The reference teaches that the thickness of the layers of metal oxides of high refractive index (e.g., titanium dioxide, as illustrated in Example) is preferably between 40 and 260 nm. See col. 3, lines 52 – 67. Dietz further suggests that “a skilled worker is able readily, by altering the layer thickness, to prepare a pigment” with a desired color and intensity. See col. 4, line 25 – 36. An interference pigment according to the invention with intense green color is disclosed in Example. Dietz further teaches that, due to the incorporation of the interlayer of a low-refractive-index metal oxide, the pigments of the invention provide improved mechanical stability, brighter colors and greater intensity of the colors than previously known interference pigments. See col. 4, lines 36 – 44.

While Kimura uses "globular nylon powders", both Kimura and Dietz fail to teach porous nylon particles.

Pola abstract teaches cosmetics comprising spherical powder of porous resin, such as nylon, having average particle size 2-20 microns. See Abstract; instant claims 9 and 10. The abstract teaches that the porous powders are used in face powder or emulsion foundation, and provide "prolonged cosmetic activity, good touch, high transparency, and high compatibility with skin". While the abstract does not disclose the refractive index of the porous nylon powder, examiner takes the position that the claimed physical characteristic must be also necessarily present in the prior art which otherwise has same or overlapping limitation as the nylon powder used in the instant invention.

Bodelin-LeComte teaches that Orgasol 2002 D Nat Cos, the porous nylon particles which meet the limitation of the porous particles of the present invention, are well known in cosmetic art. See the formulation shown in col. 5, lines 41 - 56.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the cosmetic composition in Kimura by substituting the interference pigments with the interlayered pigments as taught by Dietz, because of the expectation of successfully producing an improved skin-color adjusting composition with stability, brighter color and greater intensity of the colors. The skilled artisan would have been further motivated to substitute the spherical nylon powder with the commercially available spherical porous powder as motivated by the Pola abstract and Bodelin- LeComte because of the expectation of successfully producing a cosmetic

composition which provide longer cosmetic activity and good skin feel, and yet do not alter the coloring effect of the pigments in the composition. The claimed methods are viewed obvious uses of the composition of the combined references.

2. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura, Dietz, Pola abstract, and Bodelin-LeComte as applied to claims 1-3 and 10-17 above, and further in view of Mizugushi et al. (US 5520917) ("Mizugushi").

the anatase type titanium dioxide and the skin condition actives recited in the instant claims. While the Bodelin-LeComte formula contains anatase type titanium dioxide (Hobmitan Anatase FF Pharma from Sachtleben), the combined references fail to teach surface-treated anatase-type titanium dioxide.

Mizugushi teaches the process of coating anatase type titanium dioxide with silica. See Example 3. The reference teaches that the coated particles disclosed in the patent are useful in cosmetic applications. See col. 9, line 44 – col. 10, line 61. The advantages of using the silicone-coated particles include UV protection effects, smooth spreadability, and hiding effects. See col. 10, lines 51 – 61. Makeup compositions comprising the Mizugushi particles are said to render natural and beautifying effects over prolonged time. See *Id.*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of the combined references by adding silicone-coated anatase titanium dioxide as motivated by Mizugushi, because of the expectation of successfully producing a composition with enhanced UV protection.

3. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura, Dietz, Pola abstract, and Mizugushi as applied to claims 1-6 and 10-17 above, and further in view of Mathur (US 4096240).

The combined references fail to teach niacinamide.

Mathur teaches skin lightening composition comprising niacinamide. See abstract. The reference suggests employing from about 0.1-10 % of the active. See col. 1, line 66 – col. 2, line 30.

It would have been obvious to one having ordinary skilled in the art at the time the invention was made to have modified the composition of the combined references by adding niacinamide as motivated by Mathur because of the expectation of successfully producing a skin-color adjusting cosmetic composition with skin-lightening effect.

All components in the instant invention are well known. Nothing nonobvious or unexpected is seen in combining the conventional ingredients well known in cosmetic art. See MPEP 716.02.

Response to Arguments

Applicant's arguments filed on July 29, 2003 have been fully considered but they are moot in part view of the new ground of rejection.

Conclusion


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner


THEODORE J. CRIARES
PRIMARY EXAMINER
GROUP 1200/600